

FILED**MARCH 10, 2008**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURTUNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**08 C 1418**AHMED Y. HASSAN
A047-810-333

Plaintiff,

v.

Ruth A. Dorochoff, District
Director of the USCIS,
Department of Homeland
Security; Michael Chertoff,
Secretary, Department of
Homeland Security; Peter D.
Keisler, Acting Attorney
General, U.S. Department of
Justice
&Robert S. Mueller,
Director, Federal Bureau of
Investigation

Defendants

PETITION FOR WRIT OF HABEAS CORPUS

No.

**JUDGE ANDERSEN
MAGISTRATE JUDGE COLE**INTRODUCTION

Plaintiff, by his undersigned attorney, complaining of Defendants, allege as follows:

1. This is an action for declaratory and mandatory relief, authorized by 28 U.S.C. §1361, the mandamus statute; 28 U.S.C. §2201, the Declaratory Judgment Act; and 5 U.S.C. §702, the Administrative Procedure Act, ("APA").
2. This action seeks to compel the Chicago USCIS District Office of the Department of Homeland Security ("DHS") to adjudicate Plaintiff, Ahmed Hassan's Form N-400

Application for Naturalization which was filed on September 11, 2006 and has been pending now for over 18 months.

JURISDICTION AND VENUE

3. This court has jurisdiction over the present action pursuant to 28 U.S.C. §1331, the mandamus statute; 28 U.S.C. §2201, the Declaratory Judgment Act; and 5 U.S.C. §701 *et seq.*, the Administrative Procedure Act, ("APA").
4. Venue is proper in this court, pursuant to 28 U.S.C. §1391(e) in that Plaintiff may request a hearing on the matter in the District where Plaintiff resides.

PARTIES

5. Plaintiff, Ahmed Hassan, is a citizen and national of Somalia. Plaintiff resides in Chicago, Cook County, Illinois within the jurisdiction of this Court.
6. Any named defendant is sued in his official capacity only.
7. Ruth A. Dorochoff, the Defendant herein, is the District Director of the United States Citizenship and Immigration Services (USCIS) and is sued herein in her official capacity. Defendant is responsible for the grant or denial of naturalization applications filed within the Chicago USCIS District Office. The Federal Bureau of Investigation ("FBI") is named as a party to this action because they conduct a name/security check for the DHS as part of the application process.

FACTUAL ALLEGATIONS

8. Plaintiff was granted his permanent residency on June 3, 2001. *See* Exhibit 1.
9. On September 11, 2006, Plaintiff filed an Application for Naturalization with USCIS (LIN*000952016). *See* Exhibit 2.
10. Since Plaintiff did not hear anything from USCIS with regards to his naturalization application, in May 2007 he contacted the office of United States Senator Jan Schakowsky with a request to make a congressional liaison inquiry to USCIS. The

Senator's office submitted such inquiry on May 9, 2007. *See* Exhibit 3. The response received May 21, 2007 indicated that USCIS could not proceed with the adjudication of the application due to the pending FBI background check. *See* Exhibit 4.

11. On March 10, 2008, Plaintiff made an online inquiry at the USCIS web-site regarding status of his naturalization application and was informed that the case is still pending. *See* Exhibit 5.

LEGAL BASIS

12. Mandamus is proper if: (1) the Plaintiff can show a clear right to the relief sought; (2) the Defendants have a clear, non-discretionary duty to act; and (3) no other remedy is available. *Blaney v. United States*, 34 F.3d 509, 513 (7th Cir. 1994).
13. Federal immigration law allows persons who have been residing in the United States as lawful permanent residents to become U.S. citizen through a naturalization process. A person seeking to naturalize has to submit an application for naturalization and meet certain statutory eligibility requirements including a sufficient period of physical presence and good moral character. 8 U.S.C. § 1427(a). Plaintiff maintains that he meets all statutory requirements for eligibility for citizenship.
14. Once application for naturalization is submitted, USCIS is required to conduct examination of application. 8 U.S.C. § 1446(a)&(b). To this end, USCIS officer schedules a naturalization interview during which USCIS officer shall determine whether to grant or deny the naturalization application. 8 U.S.C. § 1446(b)&(d). Up to date no such interview has been scheduled for the Plaintiff.
15. The adjudication of plaintiff's application for naturalization is a non-discretionary ministerial act that the USCIS has a duty to accomplish in a reasonably timely fashion. Plaintiff's application for naturalization has been pending for more than 18 months since the time of filing.
16. The FBI has a non-discretionary ministerial duty to complete the background check for plaintiff in a reasonably timely fashion.

17. In addition, the continuing failure of the defendants to adjudicate Plaintiff's application for citizenship violates the Administrative Procedures Act ("APA"), which requires federal agencies to conclude matters with reasonable promptness (It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application...) 8 U.S.C. §1571, see 5 U.S.C. §555(b). Under the APA, 5 U.S.C. §706(1), this Court has the power to compel agency action unlawfully withheld or unreasonably delayed.
18. Currently, the Chicago USCIS District Office is processing N-400 applications for received as recently as July 2007, almost more than a year after it received Plaintiff's application. Defendants have failed to properly adjudicate Plaintiff's application for citizenship in a timely manner. It is imperative that Plaintiff's application be adjudicated as soon as possible, because the delay by the DHS and FBI is unreasonable, and the Plaintiff is precluded from enjoying the rights and responsibilities of being a Citizen of the United States due to agency inaction.
19. Failure of the Defendants to act in the accordance with their duties under the law has caused a significant emotional and financial hardship to the Plaintiff. Plaintiff is married to a foreign born woman and has two minor children who are currently located in Yemen. The delay in processing Plaintiff's naturalization case results in the delay of his wife and children's eligibility for an immediate relative immigrant visa to join Plaintiff in the United States.
20. Plaintiff has no other adequate remedy for the agency failure to complete and adjudicate the application for citizenship.
21. Plaintiff desires a judicial determination of his naturalization application and a declaration that he is entitled to be naturalized as a Citizen of the United States.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that the Court issue a writ directing the defendants to do the following:

1. Order DHS to adjudicate plaintiff's application for naturalization;
2. Grant Plaintiff his reasonable attorney fees and costs of this action;
3. Grant such further relief as is just and equitable.


Respectfully submitted,

MARK S. DAVIDSON
Attorney for Plaintiff

By: s/Mark S. Davidson
MARK S. DAVIDSON
Davidson & Schiller, LLC
One North LaSalle Street, Suite 2400
Chicago, Illinois 60602
Telephone: (312) 499-9000

PERMANENT RESIDENT CARD

NAME HASSAN, AHMED Y

 INS A# 047-810-333

Birthdate 04/02/70 Category DV1 Sex M

Country of Birth Somalia

CARD EXPIRES 10/20/11

Resident Since 06/03/01

C1USA0478103330SRC0201559523<<
7004029M1110207SOM<<<<<<<<<<<<<3
HASSAN<<AHMED<YOSUF<<<<<<<<<<<<<

EXHIBIT 1



Receipt		NOTICE DATE September 19, 2006	
CASE TYPE N400 Application For Naturalization		USCIS A# A 047 810 333	
APPLICATION NUMBER LIN*000952016	RECEIVED DATE September 11, 2006	PRIORITY DATE September 11, 2006	PAGE 1 of 1

APPLICANT NAME AND MAILING ADDRESS

AHMED Y HASSAN
c/o WILSON D SHINO
INTERFAITH REFUGEE IMMIGRATION
4753 N BROADWAY SUITE 401
CHICAGO IL 60640

PAYMENT INFORMATION:

Single Application Fee: \$400.00
Total Amount Received: \$400.00
Total Balance Due: \$0.00

The above application has been received by our office and is in process. Our records indicate your personal information is as follows:

Date of Birth: April 02, 1970
Address Where You Live: 1456 W ELMDEL AVE # 1N
CHICAGO IL 60660

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local USCIS office. You should expect to be notified within 540 days of this notice.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or USCIS forms, please call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit USCIS at www.uscis.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

USCIS Office Address:

U.S. CITIZENSHIP AND IMMIGRATION SERVICES
PO BOX 87400
LINCOLN NE 68501-

USCIS Customer Service Number:
(800) 375-5283

REPRESENTATIVE COPY

LIN\$000897016

EXHIBIT 2



JANICE D. SCHAKOWSKY
9TH DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE

CHIEF DEPUTY WHIP

1027 LONGWORTH HOUSE OFFICE BUILDING
Telephone: 202-225-2111
Fax: 202-226-6890
TTY: 202-225-1904

Congress of the United States
House of Representatives
Washington, DC 20515-1309

May 9, 2007

5533 N. BROADWAY, SUITE 2
CHICAGO, IL 60640
Telephone: 773-506-7100
Fax: 773-506-9202

820 DAVIS STREET, SUITE 105
EVANSTON, ILLINOIS 60201
Telephone: 847-328-3409
Fax: 847-328-3425

1420 RENAISSANCE DRIVE, SUITE 102
PARK RIDGE, IL 60068
Telephone: 847-298-2128
Fax: 847-298-2173

Mr. Ahmed Y. Hassan
1456 West Elmdale Avenue, Apartment 1N
Chicago, Illinois 60660-2439

Dear Mr. Hassan:

Our office has initiated a Congressional Inquiry with the U.S. Citizenship and Immigration Services (USCIS) on your behalf. Enclosed, please find a copy of email to the USCIS. Once we receive any word, we will forward their response to you immediately.

If you have any further questions or comments, please contact me at (773) 506 – 7100. Thank you for your patience.

Sincerely,



Taina I. Rodriguez
Constituent Advocate

Enclosure

EXHIBIT 3

From: Rodriguez, Taina
Sent: Wednesday, May 09, 2007 1:14 PM
To: USCIS
Cc: Rodriguez, Taina
Subject: Congressional Inquiry re: N-400 for Mr. Ahmed Y. Hassan

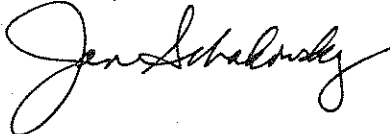
Dear Congressional Unit,

RE: N-400 for Mr. Ahmed Y. Hassan A: 047 810 333
Mailing Address: 1456 W. Elmdale Apt 1N Chicago IL. 60640

I am writing on behalf of my constituent, Mr. Amhed Y. Hassan who contacted my office requesting assistance with his Naturalization application. A signed Privacy Act Release is on file and a copy of this document can be forwarded to your office upon request.

Mr. Hassan informed my office that he for Naturalization on September 11, 2006 and submitted fingerprints on September 30, 2006. I understand that he has yet to receive an appointment for an interview. I respectfully request that your office please advise me on the status of this case and please schedule Mr. Hassan an interview at the next available date. Please give this request every consideration consistent with all laws and regulations. Please direct your response to Ms. Taina I. Rodriguez, Constituent Advocate in my Chicago office via phone at 773-506-7100, via fax at 773-506-9202 or via email at taina.rodriguez@mail.house.gov. Thank you in advance for all your attention to this matter.

Sincerely,



Jan Schakowsky
Member of Congress

JANICE D. SCHAKOWSKY
9TH DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE

CHIEF DEPUTY WHIP

1027 LONGWORTH HOUSE OFFICE BUILDING
Telephone: 202-225-2111
Fax: 202-226-6890
TTY: 202-225-1904

Congress of the United States
House of Representatives
Washington, DC 20515-1309

May 21, 2007

5533 N. BROADWAY, SUITE 2
CHICAGO, IL 60640
Telephone: 773-506-7100
Fax: 773-506-9202

820 DAVIS STREET, SUITE 105
EVANSTON, ILLINOIS 60201
Telephone: 847-328-3409
Fax: 847-328-3425

1420 RENAISSANCE DRIVE, SUITE 102
PARK RIDGE, IL 60068
Telephone: 847-298-2128
Fax: 847-298-2173

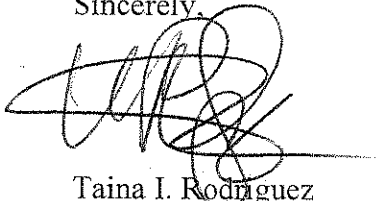
Mr. Ahmed Y. Hassan
1456 West Elmdale Avenue, Apartment 1N
Chicago, Illinois 60660-2439

Dear Mr. Hassan:

Our office has received a response to the Congressional Inquiry we launched with the U.S. Citizenship and Immigration Services (USCIS) on your behalf. Enclosed, please find a copy of a letter from Robert L. Blackwood, Field Office Director of the Chicago USCIS office.

If you have any further questions or comments, please contact me at (773) 506 – 7100. Thank you for your patience.

Sincerely,



Taina I. Rodriguez
Constituent Advocate

Enclosure

EXHIBIT 4

-----Original Message-----

From: CIS CHICAGO

Sent: Monday, May 21, 2007 10:12 AM

To: Rodriguez, Taina

Subject: A47-810-333

The Honorable Jan Schakowsky
U.S. Representative
Attn: Taina Rodriguez

May 21, 2007

A47-810-3333 Ahmed Y. Hassan

Dear Congresswoman Schakowsky:

This is in response to your inquiry dated May 9, 2007. The United States Citizenship and Immigration Services (USCIS) Chicago District Office is responding to your inquiry regarding the status of your constituent, Ahmed Y. Hassan. Our information shows that the background investigation conducted by the Federal Bureau of Investigations (FBI) for your constituent has not yet been completed. We may not proceed with the adjudication of the application or petition until the FBI completes their process and our records are updated with the results. It is uncertain the time-period it takes for the results to be electronically submitted to USCIS and updated in our national records.

We understand that your constituent is frustrated by the progress of his/her application. In order to fulfill its mission to provide immigration benefits and services to the public, USCIS must balance its obligations to the individual applicant against its obligations to the public as a whole. While we strive to process applications timely and fairly, we must also ensure that our policies and procedures will safeguard the public. Consequently, we have adopted background security check procedures that address a wide range of possible risk factors, requiring various levels of scrutiny based on the type of application under consideration.

Given the number of applications submitted and the significance of immigration benefits, it is inevitable that some applications will require more attention than others. USCIS relies primarily on three background check mechanisms: the Interagency Border Inspection System (IBIS) name check, the FBI fingerprint check, and the FBI name check. For the vast majority of applicants, these mechanisms allow USCIS to quickly determine whether there are any criminal or security related eligibility issues. In the remaining cases, often referred to as "pending," a match of some kind has been identified and must be resolved before any decision can be made on the petition or application. USCIS does not share with applicants or their representative's information regarding the specific nature of the match or the nature or status of any investigation.

Please be assured that every case that is pending a background investigation is checked weekly for results to keep the adjudication process ongoing and timely. We are allowed to resubmit names pending over 90 days only if the name does not appear in the FBI database after 90 days of submission. If requesting an expedite processing of the background investigation your constituent must provide a written request with an explanation directed to the District Director for consideration with supporting evidence. The FBI will only expedite the processing if your constituent is in the military, an "age-out", diversity (DV) lottery winner meeting the deadline date or for compelling reasons.

Again, it is difficult to predict with accuracy when the clearance will be updated in our records. Please be assured that every effort is being made to render a final decision in a timely manner.

We appreciate your patience and understanding.

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Blackwood". The signature is written in dark ink on a light-colored background.

Robert L. Blackwood
Field Office Director

5-25-07
Friday

Case Status Search

Receipt Number: LIN*000952016

Application Type: N400, APPLICATION FOR NATURALIZATION

Current Status:

Case received and pending.

On September 11, 2006, we received this N400 APPLICATION FOR NATURALIZATION, and mailed you a notice describing how we will process your case. Please follow any instructions on this notice. We will notify you by mail when we make a decision or if we need something from you. If you move while this case is pending, call customer service. We process cases in the order we receive them. You can use our processing dates to estimate when yours will be done. This case is at our NEBRASKA SERVICE CENTER location. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. Just follow the link below to register.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).

EXHIBIT 5